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Counsel for Apex Systems, LLC, and certain affiliated entities

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

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In re: : **Chapter 11**
:
SEARS HOLDING CORPORATION, et al., : **Case No. 18-23538 (RDD)**
:
: **(Jointly Administered)**
:
Debtors.¹ :
:
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**APEX SYSTEMS, LLC’S OBJECTION TO DEBTORS’ NOTICE
REGARDING INITIAL DISTRIBUTION PURSUANT TO
ADMINISTRATIVE EXPENSE CLAIMS CONSENT PROGRAM**

Apex Systems, LLC, and certain affiliated entities (collectively “Apex”),² by and through

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are as follows: Sears Holdings Corporation (0798); Kmart Holding Corporation (3116); Kmart Operations LLC (6546); Sears Operations LLC (4331); Sears, Roebuck and Co. (0680); ServiceLive Inc. (6774); SHC Licensed Business LLC (3718); A&E Factory Service, LLC (6695); A&E Home Delivery, LLC (0205); A&E Lawn & Garden, LLC (5028); A&E Signature Service, LLC (0204); FBA Holdings Inc. (6537); Innovel Solutions, Inc. (7180); Kmart Corporation (9500); MaxServ, Inc. (7626); Private Brands, Ltd. (4022); Sears Development Co. (6028); Sears Holdings Management Corporation (2148); Sears Home & Business Franchises, Inc. (6742); Sears Home Improvement Products, Inc. (8591); Sears Insurance Services, L.L.C. (7182); Sears Procurement Services, Inc. (2859); Sears Protection Company (1250); Sears Protection Company (PR) Inc. (4861); Sears Roebuck Acceptance Corp. (0535); Sears, Roebuck de Puerto Rico, Inc. (3626); SYW Relay LLC (1870); Wally Labs LLC (None); SHC Promotions LLC (9626); Big Beaver of Florida Development, LLC (None); California Builder Appliances, Inc. (6327); Florida Builder Appliances, Inc. (9133); KBL Holding Inc. (1295); KLC, Inc. (0839); Kmart of Michigan, Inc. (1696); Kmart of Washington LLC (8898); Kmart Stores of Illinois LLC (8897); Kmart Stores of Texas LLC (8915); MyGofer LLC (5531); Sears Brands Business Unit Corporation (4658); Sears Holdings Publishing Company, LLC. (5554); Sears Protection Company (Florida), L.L.C. (4239); SHC Desert Springs, LLC (None); SOE, Inc. (9616); StarWest, LLC (5379); STI Merchandising, Inc. (0188); Troy Coolidge No. 13, LLC (None); BlueLight.com, Inc. (7034); Sears Brands, L.L.C. (4664); Sears Buying Services, Inc. (6533); Kmart.com LLC (9022); Sears Brands Management Corporation (5365); and SRe Holding Corporation (4816). The location of the Debtors’ corporate headquarters is 3333 Beverly Road, Hoffman Estates, Illinois 60179

² As of December 31, 2014, Apex Systems, Inc. became a limited liability company, thus becoming Apex Systems, LLC.

undersigned counsel, file this objection (the “Objection”) to the Debtors’ Notice Regarding Initial Distribution Pursuant to Administrative Expense Claims Consent Program [Docket No. 6186] (the “Initial Distribution Notice”), and respectfully states as follows:

RELEVANT BACKGROUND

1. On October 15, 2018 (the “Petition Date”), Sears Holdings Management Corporation (“Sears Holdings Management” and collectively with the other debtors, the “Debtors”), a debtor and debtor-in-possession in the above-captioned chapter 11 cases, commenced a voluntary case under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”) in this Court. The Debtors’ chapter 11 cases are being jointly administered for procedural purposes only under Rule 1015(b) of the Federal Rules of Bankruptcy Procedure.

2. The Debtors have continued to operate and manage their businesses as debtors-in-possession under sections 1107 and 1108 of the Bankruptcy Code.

3. Apex and Sears Holding Management are party to a certain pre-petition Master Service Agreement dated as of November 10, 2016 (the “MSA” and collectively with all other supporting or related agreement, amendments, addendums, exhibits, and/or schedules to the foregoing, the “Apex Agreement”). Pursuant to the Apex Agreement, Apex provided professional services to Sears Holding Management as the parties agreed upon from time to time (collectively, the “Services”).

4. After the Petition Date, Apex continued to provide the Debtor with Services.³ To date, the Debtor has made no payments on the invoices listed below and is indebted to Apex in the sum of \$35,784.04 (the “Post-Petition Amount Due”):

³ The documentation supporting the Application is voluminous and/or confidential, but was provided to Debtor’s counsel. Further information regarding this Application is available upon written request to counsel.

Invoice #	Invoice Date	Invoice Amount
0004348440	12/11/2018	\$3,506.40
0004346301	12/11/2018	\$3,637.30
0004346302	12/11/2018	\$3,637.30
0004346303	12/11/2018	\$3,637.30
0004346444	12/11/2018	\$3,038.90
0004346445	12/11/2018	\$3,038.90
0004346446	12/11/2018	\$3,038.90
0004346447	12/11/2018	\$2,431.12
0004348438	12/11/2018	\$3,506.40
0004348439	12/11/2018	\$3,506.40
0004348441	12/11/2018	\$2,805.12
Total		\$35,784.04

5. On October 30, 2019, Apex filed *Application for Allowance and Payment of Administrative Expense* [Docket No. 5531]. Therein, Apex asserted that it provided Services to Sears Holdings Management after the Petition Date in the ordinary course of business, and these Services benefited Sears Holdings Management in the operation of its business. Accordingly, the Post-Petition Amount Due for such Services is undisputedly an administrative expense of the Debtors that is entitled to priority payment under section 503(b)(1)(A) of the Bankruptcy Code.

6. On November 7, 2019, Apex submitted its Opt-In Ballot [Sears Administrative Expense Consent Program Ballot ID 182353801042818]. On November 8, 2019, Apex received an email from M-III Partners acknowledging its opt-in ballot and requesting supporting documentation in order to reconcile the amounts claimed. Apex had previously provided this documentation to Debtors' counsel. Nonetheless, on November 12, 2019, Apex submitted the information M-III Partners requested in an Excel spreadsheet and included copies of the unpaid invoices. Since providing the requested information on November 12, 2019, Apex has received no further communication from M-III Partners, notwithstanding Apex's counsel's attempts to obtain status updates. To date, there has been no objection to Apex's administrative expense claim.

7. Apex opted in to the consent program in order to receive at least a partial payment before the end of the year. As noted in the objections raised by other administrative expense claimants, by pushing Apex into the Non Opt-Out group, despite the fact that Apex timely opted in to the consent program, the Debtors will receive the benefit of settling those administrative claims for less than the full amounts while at the same time arbitrarily excusing themselves of their obligation to issue expeditious payments to those claimants who opted in to the consent program.

8. Apex concurs and joins in any objections of similarly situated creditors with respect to the Notice and the Initial Distribution that are not inconsistent herewith.

WHEREFORE, for the foregoing reasons, Apex respectfully requests that the Court require the Debtors to include Apex in the Initial Distribution, and grant to Apex such other and further relief as is consistent with this Objection and as may be just and proper under the circumstances.

Dated: December 16, 2019
New York, New York

McGUIREWOODS LLP

By: /s/ Shawn R. Fox
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CERTIFICATE OF SERVICE

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I hereby certify that, on December 16, 2019, I caused to be electronically filed the foregoing
Objection with the Clerk of Court using the CM/ECF system which will send notification of such
filing to all CM/ECF participants.

/s/ Shawn R. Fox
Shawn R. Fox